

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 7/12/2012

Action Requested By:
Planning

Agenda Item Type
Resolution

Subject Matter:

Revocable License Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Revocable License Agreement between the City of Huntsville and BH Huntsville, LLC.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Shyl M. Basil

Date: 7-2-12

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Revocable License Agreement by and between the City of Huntsville, Alabama, and BH Huntsville, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Revocable License Agreement between the City of Huntsville, Alabama and BH Huntsville, LLC," consisting of seven (7) pages including Exhibits A, B and C, and the date of July 12, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 12th day of July, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 12th day of July, 2012.

Mayor of the City of
Huntsville, Alabama

REVOCABLE LICENSE AGREEMENT

This Revocable License Agreement ("License") is made and entered into on the ____ day of _____, 2012, by and between the City of Huntsville, a municipal corporation in the State of Alabama ("City"), and BH Huntsville, LLC, an Alabama limited liability company ("Company").

WITNESSETH:

WHEREAS, the Company owns real property in the city of Huntsville located generally at the southeast corner of Washington Street and Holmes Avenue and more particularly described on the attached Exhibit A, which is incorporated herein by reference ("Development Site"); and

WHEREAS, upon the Development Site the Company plans to construct multi-family residential apartment units ("Apartment Building"); and

WHEREAS, immediately adjacent to the Development Site is a public sidewalk of the City ("Sidewalk"); and

WHEREAS, the Company desires to install Awnings and Signs, as those terms are hereinafter defined, to the face of its Apartment Building, which Awnings and Signs will project over a portion of the Sidewalk; and

WHEREAS, it is the City's desire to allow the Premises, as that term is hereinafter defined, to be used for such purposes consistent with and subject to the terms of this License.

NOW, THEREFORE in consideration of the mutual benefits and premises contained herein, the parties hereto agree as follows:

1. Definitions, etc.

(a) *Definitions.* When used in this License, the following capitalized words, terms and phrases shall have the following meanings:

Awnings mean the awnings, including without limitation the components thereof, installed within the Premises at the location hereinafter described, and in accordance with this License; provided that if the Awnings or their locations are modified in accordance with this License, then the term shall mean the Awnings as modified.

City Property means real and personal property held by the City, which shall include but not necessarily be limited to the Sidewalk, the Premises, the public rights-of-way including without limitation public streets and sidewalks, public parks, and any and all improvements thereto including without limitation irrigation systems and landscaping.

Manager means the City's Manager of Planning Administration Manager, as such title or person may change from time to time, and the Manager's designee or designees. The Manager is hereby authorized to administer and enforcement this License as hereinafter provided.

Premises mean the area above the Sidewalk occupied by the Private Improvements and that portion of the Sidewalk which will be used on a temporary basis in order to install or maintain the Private Improvements.

Private Improvements mean the Awnings and the Signs.

Signs mean the signs, including without limitation the components thereof, installed within the Premises at the location hereinafter described, and in accordance with this License; provided that if the Signs or their locations are modified in accordance with this License, then the term shall mean the Signs as modified.

(b) *Conjunctions.* In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

(1) "And" indicates that all the connected terms, conditions, provisions or events apply.

(2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

(3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

2. Grant.

(a) *Grant.* Subject to the term and conditions hereinafter set forth the Company is hereby granted a revocable license for the installation and maintenance of the Private Improvements and for no other purpose.

(b) *Awnings.* The Awnings are to be installed along the face of the Apartment Building and projecting no greater than 6 feet over the Sidewalk along Washington Street and Holmes Avenue, as described on the attached Exhibit B, which is incorporated herein by reference; provided, however, the Awnings shall be installed at least a minimum height of 8 feet and a maximum height of 70 feet above the Sidewalk, and supported from the walls of the Apartment Building without any supporting or other structure being installed on any portion of the Sidewalk. All costs associated with the Awnings, including without limitation their purchase,

installation, maintenance, and removal shall be borne by the Company. The City shall not incur any costs associated with the Awnings.

(c) *Signs.* Company may install up to three accessory Signs, as follows:

(1) One Sign will be located on the Awning over the entrance off Holmes Avenue and one Sign will be located on the Awning over the entrance off Washington Street. A third Sign will be attached to the face of the building at the corner of Holmes Avenue and Washington Street.

(2) The Signs must be a minimum of 8 feet and a maximum of 70 feet above the sidewalk, and supported from the walls of the Apartment Building without any supporting or other structure being installed on any portion of the Sidewalk. The Signs shall not project more than 6 feet over the Sidewalk.

(3) All costs associated with the Signs, including without limitation their purchase, installation, maintenance, and removal shall be borne by the Company. The City shall not incur any costs associated with the Signs.

(d) The Company shall pay to the City a non-refundable license fee of one hundred dollars (\$100.00) at the beginning of the license term.

3. Term; non-transferable. Unless revoked or terminated sooner, as hereinafter provided, the term of this License shall be for a period of twenty-five (25) years from the date written above, with automatic yearly extensions thereafter unless either the City or the Company elect to terminate this License. This license is personal to the Company and is not transferable.

4. No vested right; termination.

(a) Under this License the Company understands and agrees that it acquires no vested right to use of the Premises or any portion thereof. In addition, this License allows the Company to use the Premises only and no other portion of City Property.

(b) The City, through its Manager, may, at any time or from time to time, require the Company, at its sole cost and expense, to eliminate or modify a component of the Private Improvements including without limitation the locations, or to remove the Private Improvements entirely from the Premises, and terminate this License and revoke all rights granted hereunder, by notifying the Company of same. The Company may, at any time, terminate this License by notifying the Manager of its intent to do so.

5. Installation.

(a) The Company shall, at its sole cost and expense, install and maintain the Private Improvements in a safe and presentable manner and free from graffiti. If damaged, the Private Improvements shall be repaired, or replaced if damaged beyond repair, by the Company as soon as practicable unless the Manager specifies a date certain in which case the damages shall be

repaired or Private Improvements replaced by that date. Maintenance shall include but not necessarily be limited to routine maintenance such as regular cleaning as well as extraordinary maintenance or repair. The Company, or those otherwise performing on its behalf, shall not damage or deface City Property nor interfere with the general operation and use of City Property. The Company shall promptly remove or correct, to the satisfaction of the Manager, any obstruction, damage, or defect in any City Property caused by the Company, or those otherwise performing on its behalf, in the installation, maintenance, removal, or other actions associated with the Private Improvements.

(b) The Company shall obtain a building permit for the installation of the Private Improvements and, failing therein, this License shall be immediately terminated. In addition to obtaining a building permit the Manager may, but is not obligated to, require the Company to submit for the Manager's prior approval the proposed methods of installation of the Private Improvements in order to ensure that the installation will not damage or deface City Property or to otherwise determine that the Private Improvements are properly installed. The Manager may require the Company to submit stamped engineering plans for the installation if the Manager deems it necessary to do so. The Manager shall have the right but not the obligation to inspect the Private Improvements or the installation thereof at any time and from time to time and order remediation where she determines that City Property has been damaged or defaced, or where she otherwise determines that it is necessary to do so for the public health, safety, or general welfare.

(c) Proposed schedules for the installation, non-routine maintenance, and removal of the Private Improvements shall be submitted to the Manager for her prior approval. The Manager may approve the schedule, or provide an alternate schedule for the proposed activity where she finds that the proposed schedule would likely interfere with City activities or projects, City permitted or licensed activities, special events, utilities projects, or other such use of City Property (hereinafter referred to collectively as "protected activities"). The Manager may at any time and from time to time require the Company to stop any work being performed on City Property in regard to the Private Improvements where she finds that such activity is interfering with protected activities or has the likelihood of posing a risk to the public health, safety, or welfare.

6. **Compliance with applicable laws.** The Company shall comply with all federal, state, and local ordinances, laws, rules, and regulations applicable to the Private Improvements, including without limitation the installation thereof or the use of the Premises there for, as such laws, etc., may be from time to time amended, and shall not use the Premises in an unlawful manner. Nothing in this License shall be construed to relieve the Company from complying with applicable city laws including without limitation the city's zoning laws.

7. **Indemnification and insurance.**

(a) The Company hereby agrees to and does hereby indemnify and hold harmless the City, its present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors from and against any and all claims, actions, judgments, damages of any kind or nature, fines, costs, liabilities, interest, or losses (including reasonable attorneys' fees and expenses and court costs and fees, through appeal), together with all costs and expenses

of any kind or nature, which arise directly or indirectly from the Company's intentional, wanton, reckless or negligent acts or failures to act, either sole or concurrent, (including but not limited to the intentional, wanton, reckless, or negligent acts or failures to act, either sole or concurrent, of the Company's employees, agents, contractors, subcontractors, or volunteers) with respect to all or any of its obligations, performances, or other actions contemplated in this License or its use of the Premises.

Nothing contained in this paragraph 7 shall be construed as a waiver of any immunity or statutory protection or cap provided in favor of the City and no third party may expand any recovery against the City due to Company's duty of indemnification.

This subparagraph (a) shall survive the expiration, revocation, or termination of this License.

(b) The Company shall obtain and maintain in effect throughout the term of this License, general liability insurance, written on an occurrence basis, covering the Premises in a minimum amount of ONE MILLION DOLLARS (\$1,000,000.00) combined single limit for bodily injury and property damage per occurrence, ONE MILLION DOLLARS (\$1,000,000.00) personal and advertising injury per occurrence, and TWO MILLION DOLLARS (\$2,000,000.00) aggregate policy limits. Such insurance shall specifically insure the Company against all liability assumed by the Company hereunder as well as liability imposed by law, and shall insure both the City of Huntsville, Alabama, a municipal corporation, its present and future elected and appointed officials, officers, employees, agents, contractors, and subcontractors, who shall be named as Additional Insureds, and the Company. Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama with an A. M. Best's rating of no less than "A" and shall be approved by the City Attorney of the City of Huntsville prior to the Company entering upon the Premises upon the terms of this License. City may, at any time, require the Company to provide a Certificate of Insurance or other proof of insurance.

8. Termination and restoration. This License is revocable at will by the City, through the Manager, at any time. Upon expiration, revocation, or the termination of this License, the Company shall, at its sole cost, expense, and risk, within 30 days of the removal order of the Manager, or such additional time as she may allow, remove the Private Improvements and restore the Premises to the condition it was in immediately prior to the installation of the Private Improvements, as determined by the Manager. In addition, the Company shall also restore any other City Property that is damaged or defaced as a result of the removal of the Private Improvements. Failing therein, the Company shall pay to the City as liquidated damages \$100.00 for each day that the Company does not comply with the removal order. In addition, upon the failure of the Company to properly and in a timely manner perform or have performed said restoration, the City, through its Manager, may perform or have performed said restoration and obtain reimbursement there for from the Company.

9. Miscellaneous.

(a) Failure of the City to insist on strict performance of any of the conditions, covenants, terms, or provisions of this License or to exercise any of its rights hereunder shall not waive such rights, but the City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

(b) This License shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

(c) Any and all disputes arising out of this License shall be governed, construed, and enforced in accordance with the laws of the State of Alabama. All actions related to the validity, construction, interpretation, and enforcement of this License shall be instituted and litigated in the courts of Alabama. Licensees submit to the jurisdiction of the courts of Alabama located in Madison County, Alabama.

(d) This License contains the sole and entire agreement of the parties with respect to matters contemplated hereunder, and no representations, inducement, promise, or agreement, oral or written, between Licensees and the City and not incorporated herein shall be of any force or effect. Any amendment to this License shall be in writing and executed by Licensees and the City.

(e) If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License.

(f) The captions of this Agreement are for convenience and reference only and in no way define, describe, extend, or limit the intent or scope of this License.

(g) All notices or demands pursuant to this License shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to the City, to: Manager of Planning Administration
City of Huntsville
308 Fountain Circle
Huntsville, AL 35801

If to the Company, to: Charlie Sealy
BH Huntsville, LLC
500 Eustis Avenue
Huntsville, AL 35801

All notices or demands shall be deemed effective, if personally delivered, upon delivery, and if mailed, by first class or certified mail, three (3) days after mailing. Nothing herein shall prevent the parties from effecting personal delivery via e-mail.

IN WITNESS WHEREOF the parties have entered into this License on the date first above written.

**The City of Huntsville, a municipal corporation in
the state of Alabama**

By: _____
Tommy Battle, Mayor

ATTEST:

Charles E. Hagood
City Clerk-Treasurer

**BH Huntsville, LLC, an Alabama limited liability
company**

By: Charlie Sealy, III

As Its: Manager of Charlie Sealy, III Company,
its Manager

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Planning Council Meeting Date: 7/12/2012

Phone # 427-5109

Contract or Agreement: **Revocable License Agreement**

Document Name: Revocable License Agreement between the COH and BH Huntsville, LLC

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:




Account Number:

Procurement Agreements	
<u>Not Applicable</u>	<u>Not Applicable</u>

Not Applicable

Grant-Funded Agreements	
<u>Not Applicable</u>	Grant Name:

Grant Name:

Department	Signature	Date
1) Originating		7-2-12
2) Legal		7-2-12
3) Finance		7-3-12
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		